Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/966,479	LARK, DAVID
	Examiner	Art Unit	
	C. Marks	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, claim 7 (parent claim to claim 9) states that the keno numbers are changed in a predetermined, non-random sequence at a predetermined speed. However, claim 9 states that the controller causes the space to change when a specific number is selected by the game. A skilled artisan would find such a claim indefinite, as it appears contradictory to the form of keno that is known in the art. A skilled artisan understands that keno is a game wherein a number is selected from a pool of numbers in random order to establish a winning set. Thus, this seems contradictory to the language of the parent claim, which states the spaces are changed in a pre-determined and non-random sequence at a predetermined speed. The rules of keno allow the numbers to be randomly called to establish the winning set. Thus, the contradiction would lead to one of ordinary skill in the art not being able to definitly ascertain that which is being claimed.

Regarding claim 15, claim 13 (parent claim to claim 15) states that the bingo numbers are changed in a predetermined, non-random sequence at a predetermined speed. However, claim 9 states that the controller causes the space to change when a specific number is selected by the game. A skilled artisan would find such a claim indefinite, as it appears contradictory to the form of bingo that is known in the art. A skilled artisan understands that bingo is a game wherein a number is selected from a pool of numbers in random order to

establish a winning set. Thus, this seems contradictory to the language of the parent claims,

which states the spaces are changed in a pre-determined and non-random sequence at a

predetermined speed. The rules of bingo allow the numbers to be randomly called to establish

the winning set. Thus, the contradiction would lead to one of ordinary skill in the art not being

able to definitly ascertain that which is being claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8, 10-14, and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Seibert et al. (US Patent No. 6,174,234).

Seibert discloses a cabinet having a front face with a gaming display supported inside

and adjacent to the cabinet and is operable to generate images (FIG 1). There is a controller

coupled to the display (FIG 2) and the system has a processor and memory (FIG 2 and 3). The

controller accepts wagers and causes an image associated with the game to be generated in

the display area (FIG 2). Axiomatically the controller is programmed to determine the games

outcome and payouts associated with such. The controller is also programmed to display a

plurality of images to create an identifiable image associated with the base game (Column 7,

lines 45-55). Siebert et al. disclose this stage as attract mode with the intent to attract players

by continuously repeating specified tasks such as music, lights or even simulating a sample

game environment (Column 7, lines 45-55). Though Siebert et al. do not explicitly disclose the

attracting image to be playing cards turned back and forth to create an identifiable image,

Siebert et al. does disclose a continuous and repeated specified task. The image displayed on

the screen is a matter of aesthetic design choice and has no bearing on the actual play of the

game (it is predetermined and non-random) as it is claimed independent of the functionality

used to award the player and establish an outcome. It therefore would have been obvious to

one of ordinary skill in the art to use any image desired in this mode. Turning cards back and

forth falls within the bounds of a repeated specified task as disclosed by Siebert et al. and would

be a matter of design choice to the Siebert et al. system. A skilled artisan most definitly would

be enabled to adapt the Siebert et al. system to a video slot machine as is notoriously well

known in the art. Motivation for using video slot machines include their enhanced graphic

capabilities which would further enhance the disclosed attract mode. The actual graphic

presentation used in the mode would be the choice of the designer who is motivated by the

wants, needs, and requirements for their system. Thus, using a card turning presentation,

which is a repeated, specified task (as enabled by Siebert et al.) would be obvious to a designer

who would be motivated by the specific and desired animations associated with their system.

Regarding claims 2-3, the processor controls the programming associated with the

display and does so in attract mode. Axiomatically, the processor thus controls whatever

animation design is chosen.

Regarding claim 4, it is known in the art to use a variety of different games on a single machine. One of ordinary skill in the art understands this and it is also shown in the different setups shown by Siebert et al. One of ordinary skill would be motivated to make this incorporation to provide a number of options to the player wherein the player is not stuck with a single game, thus providing increased enjoyment and excitement regarding the game.

Regarding claims 5-6, it is notoriously well known in the art to network gaming apparatuses to form a network. It would have been obvious to one of ordinary skill in the art to network the devices as is known in the art. One would be motivated to make this incorporation in order to allow a greater number of apparatuses to share a jackpot and form progressive awards. As is known in the art, such awards are attractive to players who see the greater prizes they offer thus are more inclined to play them in hopes of obtaining greater winnings.

Regarding claims 7-8 and 10-12, the structure of the gaming apparatus has been discussed above. Further, it would have been obvious to a skilled artisan to use a keno themed display for the designer choices discussed above regarding animation and choice of animation in an attract mode presentation.

Regarding claims 13-14 and 16-17, the structure of the gaming apparatus has been discussed above. Further, it would have been obvious to a skilled artisan to use a bingo themed display for the reasons discussed above regarding animation and choice of animation in an attract mode presentation.

Regarding claims 18-20, as disclose above it would be obvious to implement the disclosure of Seibert et al. as a video gaming setup in order to allow for greater graphic capabilities.

Regarding claims 21-24, it is axiomatic to the system that the program used to run the gaming software is stored in memory. In regards to claim 21-24, what Siebert et al. discloses

has been discussed above and is incorporated herein.   Further, it is notoriously well known in

the art that gaming machines have a memory wherein the program to be executed will be stored

in order for the device to function. This memory will also store instruction relating to the

acceptance of wagers, the control of the display, and the selection of games. Further, the

computer program would determine if the outcome of the game displayed is indeed a winning or

losing outcome and associate a payout with the outcome. It is also notoriously well known that

the memory storing the program would also be used to control any extra features or bonuses

incorporated into the game.

Storing the program in memory would be inherent to the functionality of Seibert et al. as

discussed above and Siebert et al. states that in the machine processor, all the necessary data

for the graphical displays is associated (FIG 2). Siebert et al. discloses a program loop used to

control these functions (Column 7, lines 45-55). Likewise, it is notoriously well known that a

memory has a number of registers for storing different data. Thus it would be obvious to one of

ordinary skill in the art to partition the data in the memory into these specific register partitions in

order to be responsible for certain specific functions. Partitioning memory into separate

segments for separate functions is known in the art and thus would be obvious as a means to

assign each function its own program loop and class.

Claims 9 and 15, as best understood, are rejected under 35 U.S.C. 103(a) as being

unpatentable over Seibert et al. (US Patent No. 6,174,234) in view of Frohm et al. (US Patent

No. 6,159,095).

As disclosed above, claims 9 and 15 are indefinite and thus have been rejected below

as best possibly understood in light of the apparent contradiction with their parent claim.

What Seibert et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Frohm et al. discloses a game wherein a plurality of squares are displayed and upon the calling of a specific number, the display is changed from displaying the keno square to the highlighted version indicating a specific keno number (Column 8, lines 43-50). The images of the squares are changed to represent that a number has been called. Though Frohm et al. disclose a keno embodiment, it is notoriously well known in the art that bingo and keno are art related games and thus would be obvious over each other.

Seibert et al. discloses an attract mode associated with the game that does a repetitive process that can be associated with the base game. The attract mode can simulate a real game as well. However in the actual game, it would have been obvious to one of ordinary skill in the art to incorporate the teachings of Frohm et al. to cause the keno spaces to change to display a specific keno number when selected by a game. As discussed above, it would be obvious to use any type of game in the gaming apparatus of Siebert et al. One of ordinary skill in the art would be motivated to use the Frohm display in the real game of Siebert et al. to provide clarity to the player. As Siebert et al. display the attract mode as simulation only, it would not serve to display actual numbers called when a keno animation is used. One of ordinary skill in the art understands that Siebert et al. is used to play actual games and thus by applying the Frohm et al. teachings to a keno or bingo game used in Siebert et al. the player would be able to better follow the progress of the game, thus making the machine easier to understand and play and thus generate greater revenue.

Response to Arguments

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,823,874: Attract mode that reveals indicia at a predetermined and random speed to indicate a message to the player.

US Patent No. 5,674,128: Player interface that comprises a software application for displaying attract mode graphics to attract a player wherein the game software comprises lotto, games of chance, keno, bingo or the like.

US Patent No. 5,411,271: Attract mode that uses specific characters to attract players to the gaming machine.

US Patent No. 5,393,061: Attract mode that is executed based on the program stored in the microprocessor.

US Patent No. 4,804,185: Attract mode that comprises dominoes being altered to attract a player to the game.

US Patent No. 6,645,074: Attract mode that uses game specific animations to attract the player to the game.

US Publication No. 2002/0150826: Game device that uses animation as a means to attract the player and the animation is operated among linked gaming machines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cmm
April 30, 2004

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